

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR 24 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0409-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
EARL BALL,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause Nos. CR98000296 and CR98000345

Honorable Ann R. Littrell, Judge

REVIEW GRANTED; RELIEF DENIED

Earl Ball

Florence
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Following two jury trials,¹ petitioner Earl Ball was convicted of twelve counts of sexual exploitation of a minor. The trial court imposed concurrent and consecutive sentences totaling twenty years. We affirmed Ball’s convictions and sentences on appeal, and denied relief on his petition for review of the trial court’s denial of his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. *State v. Ball*, Nos. 2 CA-CR 1999-0481, 2001-0279-PR (memorandum decision filed Aug. 31, 2006). After filing several subsequent petitions for post-conviction relief, which included, inter alia, claims of ineffective assistance of counsel, Ball again sought post-conviction relief in 2010. In that petition, he challenged the legality of the grand jury proceedings based on prosecutorial misconduct, the constitutionality of A.R.S. § 13-3553, and the trial court’s subject matter jurisdiction; he also again suggested he was denied the effective assistance of counsel. The court dismissed the petition without conducting an evidentiary hearing, and this petition for review followed. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶2 Ball claims the trial court abused its discretion by finding his claims precluded, characterizing the court’s reliance on preclusion as “legal double speak to

¹After a jury trial in August 1999, Ball was found guilty of two counts of sexual exploitation of a minor, but the jury was unable to reach a verdict on fifteen other counts. He was sentenced for the two convictions in October 1999 and was retried in December 1999 on the remaining counts. He was then convicted on ten of those counts, on which he was sentenced in October 2000.

avoid ruling on the merits of these manifest constitutional violations.” To the extent he has already served some of the sentences imposed, Ball acknowledges that part of his claim is “moot” and asks us to rectify the “gross injustice” of prosecuting him by expunging his record. He also asks us to remand this matter to the trial court to address the other issues that are not moot.

¶3 To the extent Ball’s petition for post-conviction relief presented claims he raised or could have raised either on appeal or in his previous post-conviction proceedings, they are precluded. Rule 32.2(a) precludes claims based on any ground finally adjudicated on the merits on appeal or in any previous collateral proceeding, or waived at trial, on appeal, or in any previous collateral proceeding. Moreover, nothing in the petition for review establishes that Rule 32.2(a) is inapplicable to Ball’s petition or that he should be excused from that rule’s preclusive effect. In addition, in order to state a colorable claim of ineffective assistance of counsel, a defendant must establish that counsel’s performance fell below an objectively reasonable professional standard and that the deficient performance was prejudicial to the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985). Ball has not done so here.

¶4 Based on the record before us, we cannot say the trial court abused its discretion in denying Ball’s petition for post-conviction relief. The court denied relief in a detailed and thorough minute entry order that clearly identified Ball’s arguments and correctly ruled on them in a manner that in the future will allow any court to understand their resolution. We therefore approve and adopt the court’s ruling and see no need to

restate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶5 In addition, to the extent Ball challenges this court's ruling on appeal, he cannot raise such a claim in this proceeding. *See Ariz. R. Crim. P. 31.19(c)(1)* (issues decided by court of appeals presented to supreme court for review).

¶6 Because we conclude the trial court did not abuse its discretion by denying post-conviction relief, we grant the petition for review but deny relief.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge